IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2521 OF 1995

M/s. Lubri Chem (India) & Anr. ... Plaintiffs.

V/s.

Inter State Carriers & Ors. ... Defendants.

Ms. Kanizz Munjjee i/by M/s. Motiwala & Co. for the plaintiffs.

None for the defendants.

CORAM : ANOOP V. MOHTA,J.

DATED : 14th June, 2007

ORAL JUDGMENT

The present suit is for claim of Rs.5,36,938=48 paise towards the loss of entire consignment/non-delivery of the goods.

2. Plaintiff No.1 has engaged defendants' service to carry the goods i.e. Heavy Normal Paraffin (HNP) weighting 13820 Kg. from Chembur to New Delhi. It is valued at Rs.5,36,938=48 paise. The said goods was insured with plaintiff No.2, i.e. The New India Assurance Co. Ltd. The necessary receipt and declaration, were issued by plaintiff No.2.

3. The said truck/tanker No.NLH-308 met with an

accident on 3rd March, 1992 at about 13-00 hours. As per the spot inspection report, the goods were totally damaged. The soil in the area soaked the spillage of the contents of the tanker.

4. The motor survey report dated 06/03/1992 signed by the authorized valuer has been filed on record to support the condition of the vehicle and the damage of the goods. There are also photographs of the truck and its damaged condition.

5. Plaintiff No.1, therefore, made claim against the defendants of Rs. 5,36,938.48 paise. The FIR dated 06/05/1992 is also the part of the record. Defendants have also issued damage certificate dated 03/06/1992 in favour of plaintiff No.1. Therefore, there is no dispute on record that the consignment in question which was dispatched through tanker, met with an accident at Jajihar Road, 5 kms. from Bahadurgarh, Delhi. There is also no dispute that on account of the accident the entire consignment covered by the L./R. NO.11411 dated 29/02/1992 was lost completely.

6. Plaintiff No. 2 based on the claim made by the plaintiff No.1, after due verification made the

payment of Rs.4,98,542/- to plaintiff No.1 and accordingly settled the claim in respect of the accident to the tanker in question which was covered by policy certificate No. 21/01110.

7. The original certificate/acknowledgment dated 3rd December, 1993 signed and stamped by the Accountant of plaintiff No.1 is also the part of the Court documents. Plaintiff No.1, therefore, in accordance with the law submitted all the rights and remedies in respect of the subject matters insured to plaintiff No.2. Plaintiff No.2, therefore, based on this alongwith plaintiff No.1 has filed the present suit, which is within limitation.

8. Though served, none appeared for the defendants. Affidavit of service is also filed on record by the plaintiffs. The suit against defendant No.3 was already abated. The suit remained undefended against defendant No.1 and 2. There is no written statement on record. No one is appearing on behalf of defendant Nos. 1 and 2. As directed, the plaintiffs have filed affidavit of evidence of one Rajesh Kumar Bhagat dated 20th March, 2007 alongwith the documents relied upon by the plaintiffs. Those defences are marked as P-1

collectively and taken on record.

9. The plaintiffs in his evidence have supported the case as pleaded and further proved the contents all those documents. Admittedly, there is no contest and therefore, the averments made in the pleadings as well as in the affidavit remained uncontroverted. The documents are referred above and as marked Exh. A, further supports the case, as well as plaint of the plaintiffs. Considering the fact that plaintiff No.2 has made the payment after assigning the damages only to the extent of Rs.498543, the claim as raised by the plaintiffs need to be restricted only to that extent i.e. Rs.498543. The matter on record impleading the contents of the documents has remained undisputed. Plaintiff No.2, therefore, is not entitled more than the amount which was paid by settling the claim in respect of the accident of tanker in question.

10. The payment was made on 3rd December, 1993. The plaintiffs' claim, therefore, is restricted to that amount only. In so far as the, claim of interest @ 21% p.a. from the date of filing of the suit till the payment of realization. I am of the view that the

said rate of interest is on higher side. In the facts and circumstances of the case, therefore, the rate of interest is restricted @ 9% p.a. from the date of filing of the suit till the payment or realization.

11. Defendant shall pay to the plaintiffs or to either of them, plaintiff No.1, a sum of Rs.4,98,543/- with interest thereon @ 9% p.a. from the date of filing of the suit till realization.

12. The suit is decreed, accordingly. No costs.

[ANOOP V. MOHTA, J.]